Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

CHARLES E. SAUNDERS on behalf of himself and all others similarly situated,

Petitioner,

v.

THE HONORABLE J. DENNIS HASTERT Speaker of the House of Representatives 106th Congress of the United States of America,

and

WILLIAM J. CLINTON, President and Chief Executive Officer of the United States of America,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court abused its judicial discretion in formulating and applying the rule of law relevant to the motion to recuse entitled petitioner to meaningful retrospective relief.

2. Whether the district court abused its judicial discretion in formulating and applying the rule of law relevant to the dismissal of civil rights class action entitled petitioner to meaningful retrospective relief.

PARTIES TO PROCEEDING

Petitioner is Charles E. Saunders, plaintiff in the District Court and appellant on appeal. The immediate sua sponte dismissal of the class action filed in the United States District Court for the Northern District of Texas precluded the identification of any opposing counsel representing adverse parties.

Various and sundry departments, agencies, officials, agents and employees of the United States government not made defendants herein participated as co-conspirators with the respondents in the violations alleged in this complaint and performed acts in furtherance of the violations.

The Honorable Janet Reno, Attorney General of the United States, may have an interest in the outcome of this case because of the petitioner's claim that the lower court's obfuscations of the gravamen constitutional question presented for adjudication denies petitioner due process and equal protection of the laws.

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PETITION FOR WRIT OF CERTIORARI

Charles E. Saunders, (petitioner) prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit rendered on June 14, 2000 (App. 1).

The petitioner seeks this writ of certiorari to resolve a very serious unsettled constitutional question concerning the sovereign immunity doctrine which remains unanswered and unaddressed by Article III courts.

OPINIONS BELOW

On January 5, 2000, the United States District Court for the Northern District of Texas issued order denying motion to recuse. (App. 3)

On January 6, 2000, the United States District Court for the Northern District of Texas issued order dismissing civil rights class action. (App. 4)

On January 6, 2000, the United States District Court for the Northern District of Texas rendered judgment dismissing civil rights class action. (App. 8)

On June 14, 2000, the United States Court of Appeals for the Fifth Circuit issued a memorandum to counsel with a conference calendar order dismissing appeal of civil rights class action (App. 1). The United States Court of Appeals for the Fifth Circuit's decision is unpublished.

JURISDICTION

The federal constitutional basis for relief was asserted by the petitioner before the district court pursuant to 28 U.S.C. § 1331(a) for acts by federal officials creating a cause of action implied under the equal protection element of the Due Process Clause of the Fifth Amendment to the Constitution of the United States of America which gives rise to cases or controversies under Article III, Section 2, of the Constitution of the United States of America.

The jurisdiction of the Supreme Court of the United States is conferred by 28 U.S.C. § 1254 and 28 U.S.C. § 2101(c). This petition is timely submitted pursuant to United States Supreme Court Rule 13.3.

CONSTITUTIONAL AMENDMENT INVOLVED

The First Amendment to the United States Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

STATEMENT OF THE CASE

This action is brought by the petitioner seeking redress for the United States government's unconstitutional withholding and denial of the petitioner's rights

and privileges of American citizenship conferred upon the petitioner pursuant to the Fifth and Fourteenth Amendments to Constitution of the United States of America.

For the past thirty years the petitioner has lived an incredible but well-documented saga of continuous and uninterrupted racially motivated persecution by certain known and other unknown officers, agents, and/or employees of the Department of the Air Force, Small Business Administration, Internal Revenue Service, United States Postal Service, Department of Labor, and on more than one occasion even by the federal judiciary.

The United States government violated rights and privileges irrevocably conferred upon the petitioner pursuant to the First, Fifth and Eighth Amendments to the Constitution of the United States as well as the statutory rights inured to the petitioner pursuant to 42 U.S.C. §§ 1981, 1985, and 1986 in the civil rights lawsuits captioned *Saunders v. Bush*, 15 F.3d 64 (5th Cir. 1994), cert. denied, 512 U.S. 1207 (1994) and *Saunders v. United States*, 520 U.S. 1212, 117 S. Ct. 1697, 137 L. Ed. 2d 823 (1997), and is still continuing unimpeded to this date by Article III courts of the United States, compelling the petitioner, Charles E. Saunders, to again petition the Supreme Court of the United States pursuant to 28 U.S.C. § 2101(c) to review the final order and judgment of the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE FACTS

The class action was brought by petitioner to obtain injunctive and declaratory relief and for relief incident and subordinate thereto in his own behalf and on the behalf of all other similarly situated American citizens.

The classes represented by petitioner in this action and of which petitioner is himself a member consists of citizens of every state and every territorial possession under the jurisdiction of the United States of America regardless of their race, gender, ethnic identity, economic status, social class or political affiliation. Petitioner is also a member of the sub-class which consists of citizens of every state and every territorial possession under the jurisdiction of the United States of America who are identifiable descendants of former slaves.

Both the class and sub-class are adversely affected by the spurious assertion of the doctrine of sovereign immunity by the United States Government and federal government officials as an affirmative defense for depriving members of the class and sub-class of due process and equal protection of the laws.

REASONS FOR GRANTING THE WRIT

I. THE PETITION CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES AN UNEQUIVOCAL RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

There are common questions of law and fact in the class action that relate to and affect the rights of the

members of the class and sub-class. The relief sought is common to both the class and sub-class, namely, that the United States government be permanently restrained and enjoined from asserting the doctrine of sovereign immunity as a jurisdictional bar to the litigation of lawsuits against the United States government and federal government officials in contravention of the Petition Clause of First Amendment to the Constitution of the United States of America.

An examination of some of the old writings on our government we see in The Federalist Papers, No. 78, Alexander Hamilton points out clearly that a constitution is, in fact, the fundamental law. Judges must regard it as such! And, in the same paper, he remarks that is their duty to declare all acts contrary to authority of the Constitution void. Without the performance of this duty, he adds, all the talk about rights or privileges would amount to nothing.

In 1935, the Supreme Court decided not to consider constitutionality of an issue if it could avoid it. (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288). If a controversy could be disposed of on some grounds, other than constitutionality, that was the path they would follow. They have simplified their job. If constitutionality is to be contested, they simply refuse to consider it. It does not get onto the docket. Every court from the Supreme Court of the United States on down now follows that decision! Protectors of the people? Does this fit the description of "good behavior"?

One of their favorite words is frivolous. If forced into a decision they prefer not to make, they say, "It is frivolous!" The issue is then denied and thrown out of court. It's the judicial way of invoking the Fifth Amendment "privilege" of not incriminating themselves.

All federal judges hold their positions during good behavior. (Art. III, sec. 1) Violation of the Constitution cannot by any stretch of the imagination be considered good behavior! Even a moron would have to agree with that! Hamilton (speaking of federal judges) points out further in Paper No. 79, "They are liable to be impeached for malconduct by the House of Representatives and tried by the Senate; and, if convicted, may be dismissed from office and disqualified from holding any other."

Malconduct is "Ill conduct, especially dishonest conduct, maladministration, or, as applied to officers, official misconduct." (Black's Law Dictionary, Fifth Ed.) Exactly what the petitioner is complaining about in this civil right class action The violation of constitutional restrictions or amending the Constitution in any manner not authorized is dishonest conduct and therefore, official misconduct.

The United States Court of Appeals for the Fifth Circuit has clearly deposed of the petitioner's recusal motion and the petitioner's civil rights class action lawsuit without addressing the petitioner's challenge of the constitutional validity of the doctrine of sovereign immunity.

Two principles govern the intensity of the appellate court's scrutiny of the petitioner's appeal. First, the Federal Rules of Civil Procedure erect a powerful presumption against rejecting pleadings for failure to state a

claim. Rule 8 fosters that policy by sweeping aside the hypertechnical pleading rules that once defeated many an unwary but meritorious claimant; it requires nothing more than a plain recitation of the facts that the petitioner believes entitles him to relief. Thus, although Rule 12(b)(6) authorizes prompt dismissal of claims if the petitioner's belief proves to be mistaken, its sanction extends only to a formal testing of the legal sufficiency of the factual basis that the petitioner asserts in support of his claim.

In the present case, the face of the petitioner's complaint clearly states a federal question sufficient to confer subject matter jurisdiction on the district court. The complaint invokes sections 1981, 1985 and 1986 of 42 U.S.C., as well as the first and fifth amendments to the Constitution; in addition to the cruel and unusual punishments clause of the eighth amendment, the constitutional and statutory provisions which are implicit in the petitioner's allegation of injury by officers, agents, and or employees of the Government of the United States. Federal law thus provides both the substantive rights and the remedy for violation of those rights. "In [such] cases jurisdiction is taken as a matter of course." 13B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3562, at 40 (2d ed. 1984) (footnote omitted).

The Supreme Court has established and enunciated a strict standard for dismissals for lack of subject matter jurisdiction when the basis of jurisdiction is also an element in the plaintiff's federal cause of action.[1]

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[1] Whether the complaint states a cause of action on which relief could be granted is a question of law and just as questions

The district court has no license to question the truth of factual allegations, e.g., *Trupiano v. Swift & Co.*, 755 F.2d 442, 443 (5th Cir. 1985) and must be reversed "unless it appears beyond doubt that the petitioner can prove no set of facts in support of his claim which would entitle him to relief," *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957).

The district court's reliance upon material outside the complaint meant that it converted the petitioner's complaint into a summary judgment and should have observed the procedural requirements that Rule 56 prescribe.[2]

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of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction. *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981).

[2] (c) Motion for Judgment on the Pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings.

The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

The court's failure to do so raises two distinct issues. The first concerns the notice and hearing requirement of Rule 56 of Fed.R.Civ.P. The court did not give the petitioner notice of its intention to consider matter outside the complaint and to render judgment on the merits. Rule 56 clearly requires that summary judgment motions be served at least ten days prior to the hearing date and that all parties be given an opportunity to present additional material. The Fifth Circuit has consistently interpreted the terms of Rule 56 strictly and has refused to dispense with the procedural safeguards of notice and hearing.[3]

The second question involves the Fifth Circuit's own established standard of review.[4] Where "a district judge grants a motion styled a motion to dismiss, but bases his ruling on facts developed outside the pleadings, . . . the appellate court will review the order under the standards laid down in Fed.R.Civ.P. 56." *Estate of Smith v. Tarrant*

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[3] Even in the circuits following the moderate trend regarding Rule 56, where a district court is allowed sua sponte to enter summary judgment, it has been required that the court observe the same 10 day notice and hearing requirements applied to summary judgment motions filed by a party. *Herzog & Straus v. GRT Corporation*, 553 F.2d 789 (2nd Cir. 1977).

[4] See *Capital Films Corp. v. Charles Fries Prod.*, 628 F.2d 387, 392 (5th Cir. 1980); *Hickey v. Arkla Indus., Inc.*, 615 F.2d 239, 240 (5th Cir. 1980); *Underwood v. Hunter*, 604 F.2d 367, 369 (5th Cir. 1979); *Kibort v. Hampton*, 538 F.2d 90, 91 (5th Cir. 1976); *Sharlitt v. Gorinstein*, 535 F.2d 282, 283 (5th Cir. 1976); *Scott v. Courtesy Inns, Inc.*, 472 F.2d 563, 564 (5th Cir. 1973); *Gutierrez v. El Paso Community Action Program*, 462 F.2d 121, 122 (5th Cir. 1972); *Georgia So. & F. Ry. v. Atlantic Coast Lines R.*, 373 F.2d 493, 497-98 (5th Cir. 1967); *Enochs v. Sisson*, 301 F.2d 125, 126 (5th Cir. 1962).

County Hosp. Dist., 691 F.2d 207, 208 (5th Cir. 1982) (footnote omitted); *see Geiger v. United States*, 707 F.2d 157, 160 (5th Cir. 1983) (citing *Estate of Smith*).

The record in this case is clear that the district court has not satisfied that standard and ample questions of material fact remain for trial. Summary judgment was improper because the petitioner did not receive adequate notice and there were genuine issues of material fact. Therefore, the district court erred in dismissing the petitioner's claims. The questions concerning subject matter jurisdiction are intertwined with the merits, the court should not have dismissed the petitioner's claim for lack of subject matter jurisdiction unless the claim was found to be frivolous by the citation of a stare decisis judicial opinion clearly establishing the constitutional validity of the doctrine of sovereign immunity. *Clark v. Tarrant Cty.*, 798 F.2d 736, 739 (5th Cir. 1986).

In reviewing a case dismissed on the pleadings, the appellate court was required to accept as established all factual allegations contained therein. *Woodard v. Los Fresnos Independent School District*, 732 F.2d 1243, 1245 (5th Cir. 1984). Dismissal was improper unless "it appears beyond doubt that [the petitioner] can prove no set of facts in support of the claim that would provide a basis for relief. *Id.* at 1245 (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957)).

The district court addressed the issue of standing within the context of determining whether it had subject matter jurisdiction. The district court's inquiry was thus governed by the standard applicable to ruling on a motion to dismiss for want of standing. For purposes of

such a motion, "both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975). *Gilmore v. City of Montgomery*, 417 U.S. 556 (1974); *Norwood v. Harrison*, 413 U.S. 455; and *Coit v. Green*, 404 U.S. 997 (1973), summarily aff'g *Green v. Connally*, 330 F.Supp. 1150 (D.C. 1971) – requires a finding of standing here. *See, also, Allen v. Wright*, 468 U.S. 737, 751 (1984).

"As the United States is not suable of common right, [a right derivative from common law, *Strother v. Lucas*, 37 U.S. (12 Pet.) 410, 437 (1838)] the party who institutes such suit must bring his case within the authority of some act of congress, or the court cannot exercise jurisdiction over it." *United States v. Clarke*, 33 U.S. 436, 444 (1834). The test for how and when a case arises "under the Constitution or laws of the United States" is clearly defined in *Gully v. First National Bank*, 288 U.S. 109, 57 S. Ct. 96, 70 L. Ed. 70 (1936).

To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. *Starin v. New York*, 115 U.S. 248, 257 (1885); *First National Bank v. Williams*, 252 U.S. 504, 512 (1920). The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. *King County v. Seattle School District*, 263 U.S. 361, 363, 364 (1923). A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto (*New Orleans*

v. Benjamin, 153 U.S. 411, 424 (1894); *Defiance Water Co. v. Defiance*, 191 U.S. 184, 191 (1903); *Joy v. St. Louis*, 201 U.S. 332 (1906); *Denver v. New York Trust Co.*, 187 F. 890 (8th Cir. 1911), and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal, *Tennessee v. Union & Planters Bank*, 152 U.S. 454 (1894); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908); *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913); *Taylor v. Anderson*, 234 U.S. 74 (1914).

The petitioner satisfies the Article III core standing requirement by alleging a personal injury-in-fact that is fairly traceable to the defendants' judicially cognizable unconstitutional conduct. The judicially cognizable unconstitutional conduct herein alleged would likely be redressed by the relief requested in the petitioner's complaint.

Sanctimonious Article III courts of the United States (hypocritical courts of justice) has consistently and unconstitutionally refused to permit the challenged constitutional validity of the judicially created doctrines of sovereign and absolute immunity to be vigorously litigated.

The "no contest" silence by Article III courts has the equivalent effect of an admission of the facts and issues. A continued "no contest" silence would forever put an indelible stain upon the intellectual honesty and moral integrity of the current Justices of the Supreme Court of the United States that will be impossible to remove.

The injuries alleged in the petitioner's civil rights class action complaint are " 'distinct and palpable,' "

Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979) (quoting *Warth v. Seldin*, 422 U.S. 490, 501; 95 S. Ct. 2197; 1975). The injuries alleged in the petitioner's civil rights class action complaint are not "abstract" or "conjectural" or "hypothetical," *Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983); *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974) and the injuries alleged therein can be "fairly" traceable to the challenged unconstitutional conduct. Relief from the injuries alleged in the petitioner's civil rights class action would "likely" result from a favorable decision. *See Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 41; 96 S. Ct. 1917 (1976).

The doctrine of sovereign immunity and the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence.

The amoral unconstitutional doctrine of sovereign immunity if allowed to stand will continue to apply equally to situations wherein federal officers, agents, and employees could, as in the instant case, wantonly perpetrate any imaginable constitutional tort upon any politically dissident citizen of the United States of America, the Bill of Rights notwithstanding.

The doctrines of sovereign immunity and absolute immunity actually frustrate the constitutional framers' intended purpose to restrain tyrannical acts of government upon citizens of the United States of America.

Article III courts acting in conspiratorial concert with the legislative and executive departments of the United States Government have unconstitutionally created the doctrine of sovereign immunity to slam courthouse doors

against the petitioner's constitutionally protected right to full consideration of his claims on the merits.

The petitioner has repeatedly judicially challenged the constitutional power and authority of Article III courts to promulgate and uphold the constitutionally repugnant doctrine of sovereign immunity. *See, Saunders v. Bush*, 15 F.3d 64 (5th Cir 1994), cert. denied, 512 U.S. 1207 (1994); *Saunders v. United States*, 520 U.S. 1212, 117 S. Ct. 1697, 137 L. Ed. 2d 823 (1997).

The petitioner's civil rights class action complaint presents a very serious unsettled constitutional question concerning the sovereign immunity doctrine which remains unanswered and unaddressed by Article III courts. "[T]here can be no doubt about the direct causal relationship between the Government's alleged deprivation of [the petitioner's] right to due process and equal protection of the law and the personal injury [the petitioner] has suffered" – *Heckler v. Mathews*, 465 U.S. 728, 739-741, n. 9 (1984).

Rulings not on the merits are preclusive only as to issues. Where the court dismisses on a ground that does not relate to the merits (e.g., for lack of jurisdiction, improper venue, or dismissal expressly "without prejudice" to a new action), the judgment or dismissal does not bar a subsequent action.[5]

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[5] At the government's behest, subject matter jurisdiction over each of the petitioner's civil rights lawsuits were consistently declined by the courts. Therefore, without res judicata effect as to the petitioner's claims pursuant to 42 U.S.C. §§ 1981 and 1985 and 1986.

Moreover, the October 5, 1992, order of the United States District for the Northern District of Texas specifically stated that plaintiff's 42 U.S.C. §§ 1981 and 1985 claims were "dismissed without prejudice."

Under the doctrine of res judicata a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action under the related doctrine of collateral estoppel. Once a court has decided an issue of fact or law necessary to its judgment that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.

As the Supreme Court noted in its opinion in *Montana v. United States*, 440 U.S. 147, 163 (1978), "when issues of law arises in successive actions involving unrelated subject matter, preclusion may be inappropriate. The Court held that this exception is of particular importance in constitutional adjudication.

Unreflective invocation of collateral estoppel against parties with an ongoing interest in constitutional issues could freeze doctrine in areas of the law where responsiveness to changing patterns of conduct or social mores is critical."

At the government's behest, subject matter jurisdiction over each of the petitioner's civil rights lawsuits were consistently declined by the courts. The courts of appeal as well as the Supreme Court of the United States has repeatedly recognized, that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair

opportunity" to litigate that issue. *Allen v. McCurry*, 449 U.S. 90, 95 (1980).

Each of the eminent jurists who presided over the petitioner's civil rights lawsuits consistently and blatantly cited unfounded "legal conclusions" to dispose of each of the petitioner's civil rights lawsuits without ever citing one single stare decisis judicial decision establishing the constitutional validity of the doctrine of sovereign immunity, the gravamen issue of the petitioner's civil rights class action.

The petitioner is, beyond any question of reasonable doubt, being deprived of his Fifth Amendment right of due process and equal protection of the laws as long as Article III courts refuse to adjudicate the challenged constitutional validity of the doctrine of sovereign immunity.

II. THE APPEARANCE OF IMPARTIALITY DEMANDS THE RECUSAL OF A JUDGE WHOSE IMPARTIALITY CAN BE REASONABLY QUESTIONED.

On January 4, 2000, the petitioner simultaneously filed a civil rights class action and a motion for the Honorable Sam R. Cummings, United States District Judge, to recuse himself from presiding over any proceedings of the petitioner's civil rights class action lawsuit.

On January 5, 2000, the Honorable Sam R. Cummings without any explanation, arbitrarily and capriciously, denied the motion to recuse himself from presiding over any proceedings of the petitioner's civil rights class action lawsuit pursuant to 28 U.S.C. § 455(a).

Such denials are usually subject to appellate review for abuse of discretion. *See United States v. Lowe*, 106 F.3d 1498, 1504 (10th Cir. 1997) "The goal of the judicial disqualification statute is to foster the appearance of impartiality." *Potashrick v. Port City Construction Co.*, 609 F.2d 1101, 1111 (5th Cir.), *cert. denied*, 449 U.S. 820, 101 S. Ct. 78, 66 L. Ed. 2d 22 (1980).

However, because the judge in this case did not create a record or document his decision not to recuse any review of the denial must be de novo. *See United States v. Greenspan*, 26 F.3d 1001, 1007 (10th Cir. 1994) (noting that a judge "must document the reasons for his or her decision [on recusal] so that the decision may be reviewed, if necessary, by an appellate court").

The Honorable Sam Cummings, United States District Judge, has previously refused to rule on the challenged constitutional validity of the doctrine's sovereign immunity and absolute immunity. Therefore, his impartiality may now be reasonably questioned pursuant to 28 U.S.C. § 455(a).

Upon intellectual examination any reasonable person would likely conclude that the Honorable Sam Cummings, United States District Judge, would as he had on the previous occasion refuse to rule on the challenged constitutional validity of the doctrines sovereign immunity and absolute immunity. Thus, his impartiality may now be reasonably questioned pursuant to 28 U.S.C. § 455(a).

In addition, the Honorable Sam Cummings, United States District Judge, blatantly abused his judicial discretion by wrongfully imposing Rule 11 sanctions upon petitioner for filing an alleged frivolous lawsuit against a sitting president. The petitioner articulated a reasonably clear unresolved and unsettled legal justification for filing the complaint. Therefore, no improper purpose can be shown and sanctions were constitutionally inappropriate.

The Congressionally codified standard requires a judge to disqualify himself if his "impartiality may reasonably be questioned." If a reasonable basis exists for the motion, the judge should recuse himself. Congress explained that it replaced the subjective standard with the objective standard in order to clarify and broaden the grounds for judicial disqualification and to foster public confidence in the judiciary.

The appearance of propriety demands the recusal of the Honorable Sam Cummings, United States District Judge, from presiding over any proceedings in the petitioner's civil rights class action lawsuit.

Both the district courts and appellate courts below have well demonstrated a characteristic adherence to a form of law while departing from its substance in sustaining sua sponte obfuscations of the petitioner's gravamen constitutional question presented for adjudication.

Amended Rule 11 mandates the court to focus on objective circumstances in determining whether an attorney or a pro se litigant has conducted "reasonable inquiry" and that the complaint is well-grounded both in fact and in law. Purely subjective elements should not be

reintroduced into the determination concerning improper purpose.

CONCLUSION

For all of the aforesaid reasons the petitioner, Charles E. Saunders, respectfully submits that this Honorable Court should reverse the United States Court of Appeals for the Fifth Circuit's decision in this case, and the case be remanded for an adjudication of the doctrines of sovereign and absolute immunity.

Respectfully submitted in the service of God my Father, Christ my Redeemer and Man my Brother.

CHARLES E. SAUNDERS
Petitioner, pro se
5709 89th Street
Lubbock, Texas 77424-4529
(806) 794-7043

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10044
Conference Calendar

CHARLES E. SAUNDERS, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

versus

J. DENNIS HASTERT, The Honorable, Speaker of the House of Representatives of the 106th Congress of the United States of America, WILLIAM J. CLINTON, President and Chief Executive Officer of the United States of America,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:00-CV-3-C

(Filed Jun. 14, 2000)

Before JOLLY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:*

Charles E. Saunders appeals the district court's denial of his motion to recuse and dismissal of his 42

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

U.S.C. §§ 1981, 1985, 1986 claims. Saunders argues that the district court judge was not impartial. Saunders also contends that he demonstrated a federal question which conferred subject matter jurisdiction and that he showed an injury in fact.

Saunders has not demonstrated that a reasonable person would harbor doubts about the district court judge's impartiality because he had not provided sufficient evidence to question the district court judge's impartiality. *See Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1408 (5th Cir. 1994). Saunders lacks standing because he does not allege an injury in fact. *See Breaux v. United States Postal Serv.*, 202 F.3d 820, 820 (5th Cir. 2000). This appeal is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir.1983).

Saunders is cautioned that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Saunders is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHARLES E. SAUNDERS, on behalf of himself and all others similarly situated, Plaintiff, v. THE HONORABLE J. DENNIS HASTERT, Speaker of the House of Representatives of the 106th Congress of the United States of America, and WILLIAM J. CLINTON, President and Chief Executive Officer of the United States of America, Defendants.	)	Civil Action No. 5:00-CV-003-C

ORDER

(Filed Jan. 5, 2000)

The Court having considered Plaintiff's Motion to Recuse, filed January 4, 2000, is of the opinion that the same should be **DENIED**.

SO ORDERED.

Dated January 5, 2000.

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHARLES E. SAUNDERS, on behalf of himself and all others similarly situated, Plaintiff, v. THE HONORABLE J. DENNIS HASTERT, Speaker of the House of Representatives of the 106th Congress of the United States of America, and WILLIAM J. CLINTON, President and Chief Executive Officer of the United States of America, Defendants.	)	Civil Action No. 5:00-CV-003-C

ORDER

(Filed Jan. 6, 2000)

On this day the Court considered Plaintiff's Complaint in the above-styled and -numbered cause, filed January 4, 2000. Plaintiff, appearing *pro se*, purports to bring a class action suit against Defendants and apparently seeks declaratory and injunctive relief involving issues presented in two lawsuits he previously filed against United States presidents and other federal employees. In 1992, Plaintiff brought an action against former President George Bush and certain officials of the United States Department of Labor in the Abilene Division of the United States District Court for the Northern District of Texas. In 1995, Plaintiff brought suit against

President Bill Clinton in the United States District Court in Washington, D.C. In both cases, the defendants asserted the affirmative defenses of sovereign and absolute immunity; the cases were dismissed by the district courts. The Courts of Appeals in each case affirmed the district courts' dismissal of the action. The United States Supreme Court denied Plaintiff's petitions for Writ of Certiorari in each case. Plaintiff now asks the Court to determine "whether the doctrine of sovereign immunity is unconstitutional, a question that is common to the claims of all members of the class and sub-class alike."

The Court begins by *sua sponte* determining whether it possesses jurisdiction over the subject matter of the issues presented in the present suit. Although a plaintiff brings suit in federal court which invokes federal question jurisdiction, a district court should nevertheless dismiss such cases for lack of subject matter jurisdiction when "the claim clearly appears to be immaterial, wholly insubstantial and frivolous, or otherwise so devoid of merit as not to involve a federal controversy." *Steel Co. v. Citizens for a Better Environment*, ___ U.S. ___, 118 S.Ct. 1003, 1007 (1998). A claim is considered to be insubstantial if it is obviously without merit or foreclosed by prior decisions. *See Clark v. Tarrant County, Texas*, 798 F.2d 736, 741 (5th Cir. 1986); *In re Carter*, 618 F.2d 1093, 1103 (5th Cir. 1980); *Barnes v. colonial Life & Accident Ins. Co.*, 818 F.Supp. 978, 980 (N.D. Tex. 1993).

The Court finds that it does not possess subject matter jurisdiction over Plaintiff's claims because Plaintiff's claims are frivolous, without merit, and foreclosed by prior decisions. Whether or not a federal agent or officer was constitutionally empowered to assert sovereign

immunity as a defense to Plaintiff's previous lawsuit claims has already been resolved by the respective federal Courts of Appeals; writs of certiorari were denied in each case. Furthermore, the Supreme Court recognized the doctrine of sovereign immunity as early as 1834, holding that the United States government may not be sued without its consent. *United States v. Clarke*, 33 U.S. 436, 444 (1834). This doctrine has been consistently applied over the years to shield federal employees from suit absent a waiver under the Federal Tort Claims Act. *See Molzof v. United States*, 502 U.S 301, 304 (1992).

This Court, having found the question of sovereign immunity's constitutional basis to be foreclosed by prior Supreme Court decisions as well as the prior disposition of Plaintiff's prior lawsuits, finds that Plaintiff's present suit is clearly immaterial, wholly insubstantial and frivolous.[1] Therefore the Court **DISMISSES** the above-styled

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[1] To the extent Plaintiff's Complaint otherwise attempts to challenge the doctrine of sovereign immunity as a matter of theory, this Court holds that Plaintiff does not possess sufficient standing to address this question, as claims that are merely conjectural or hypothetical in nature are insufficient. *Sierra Club v. Peterson*, 185 F.3d 349, 360 (5th Cir. 1999). To assert standing, a Plaintiff must allege "(1) an injury that is concrete, particularized and actual or imminent; (2) a causal connection between the alleged injury and the defendant's conduct; and (3) a likelihood that a favorable decision will redress the injury." *Okpalobi v. Foster*, 190 F.3d 337, 350 (5th Cir. 1999), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Within this framework, subject to some narrow exceptions, Plaintiff is also not allowed to bring an action to assert the constitutional rights of other individuals. *Okpalobi*, 190 F.3d at 350 (5th Cir. 1999).

and -numbered case for lack of subject matter jurisdiction.

SO ORDERED.

Dated this 6th day of January, 2000.

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHARLES E. SAUNDERS, on behalf of himself and all others similarly situated, Plaintiff, v. THE HONORABLE J. DENNIS HASTERT, Speaker of the House of Representatives of the 106th Congress of the United States of America, and WILLIAM J. CLINTON, President and Chief Executive Officer of the United States of America, Defendants.	)	Civil Action No. 5:00-CV-003-C

JUDGMENT

(Filed Jan. 6, 2000)

On this day the Court ORDERED, ADJUDGED and DECREED that Plaintiff **CHARLES E. SAUNDERS'** claims against Defendants in the above-styled and -numbered case are **DISMISSED**.

Dated January 6, 2000

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

APPENDIX

Prescribed by Supreme Court Rule 14(f)

Constitutional Provisions

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between two or more states; – between a state and citizens of another state; – between citizens of different states; – between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and

fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the

land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions

28 U.S.C. § 455 – Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that

he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

28 U.S.C. § 1254 – Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. Sec. 1331 –

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 2101(c) –

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

42 U.S.C. § 1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1985 –

(1) Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his

being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an

action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986 –

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Federal Rules of Civil Procedure

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature.

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Rule 56. Summary Judgment

(a) For Claimant.

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is

sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion.

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable.

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.